#### BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

1	NANCY KEENAN
2	STATE OF MONTANA
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4	PAMELA E. DOUGHERTY,
5	Appellant, OSPI - 161-88
6	vs. ORDER
7	TRUSTEES, TETON COUNTY SCHOOL
а	DISTRICT NO. 30,
9	Respondents.

## STATEMENT OF THE CASE

This matter is an appeal from the decision of the Teton County Superintendent of Schools affirming the decision of the Board of Trustees of Teton County School District No. 30. The County Superintendent found that Appellant Dougherty is a non-tenured half-time librarian. The issue before this Superintendent is whether in Appellant Dougherty's current position with the district as half-time librarian, she is tenured or non-tenured.

# Backsround

Dougherty was a tenured teacher employed by Respondents teaching home economics half-time and working half-time as the school's librarian. In March, 1988, the Respondent decided to eliminate the home economics program. The librarian position was not eliminated. A hearing, as required by statute, was held on the recommendation of the superintendent to eliminate the home economics program and the trustees voted to terminate Dougherty's

contract.

Dougherty was subsequently offered, and accepted, the continued half-time librarian position for 1988-89, a position that she has held since the second semester of the 1982-83 school year.

Dougherty filed a timely appeal with the County Superintendent as provided in Section 20-4-204, M.C.A., contending that she should have tenure in the half-time librarian position for 1988-89. The parties waived a hearing, entered into a stipulation of facts and submitted briefs to the County Superintendent. On November 9, 1988, the County Superintendent found as a conclusion of law that Dougherty is a non-tenured half-time librarian.

On December 9, 1988, a Notice of Appeal was filed with this Superintendent.

### DECISION AND ORDER

The State Superintendent of Public Instruction has jurisdiction of this appeal in accordance with Section 20-3-210, M.C.A.

Having reviewed the complete record established at the county superintendent hearing, the findings of fact, conclusions of law and order of the county superintendent and read the appeal briefs of the parties, this Superintendent reverses the decision of the County Superintendent because the conclusions of law are affected by error of law. The facts, having been stipulated by the parties, are not in dispute.

Tenured teachers must be terminated pursuant to Section 20-4-204, M.C.A. It is clear from the record that Respondent eliminated only the home economics program and the attendant half-time home economics position. The half-time librarian position was undisturbed.

### MEMORANDUM OPINION

This case is similar to <u>Raymond Harris v. Trustees, Cascade</u>

<u>County School District No. 6 and F, OSPI 138-87 (7 Ed. Law 246</u>

afm<sup>1</sup>d ADV 89-42, 1st Judicial Dist. 1989).

The sole issue before this Superintendent is whether Appellant Dougherty after six consecutive years as a half-time librarian continues to be tenured as a half-time librarian. The elimination of her half-time home economics position is uncontroverted.

The record, however, reflects no basis for terminating her tenured services as a half-time librarian. Her half-time tenure in that position was established when the fourth consecutive contract with the district was signed. Section 20-4-203, M.C.A.. Tenure applies to part-time positions. See <a href="State ex rel.Saxtorph">State ex rel.Saxtorph</a>
V. District Court, 128 Mont. 353, 275 P 2d 209 (1954). As has been found in case after case, tenure of a teacher is clearly both a valuable and a substantial right which cannot be taken away except for good cause.

I would agree with Appellant's argument that to contend that Appellant has lost tenure although now serving for the sixth consecutive year as half-time librarian would be endorsing a hypertechnical maneuver to circumvent the valuable rights of

tenure.

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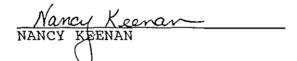
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Judge Henry Loble in affirming the findings of this Superintendent in Harris, supra., heldthat the board was mistaken when it contended that the teacher had no right to the remaining half-time position resulting from the reduction of a full-time position to a half-time position.

Based on the record before this Superintendent, the decision of the Teton County Superintendent is reversed.

DATED this 3 day of October, 1989.



## CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the  $4^{10}$  day of October, 1989, a true and exact copy of the foregoing ORDER was mailed, postage prepaid to:

Emilie Loring HILLEY & LORING 500 Daly Avenue Missoula, MT 59801

Charles E. Erdmann ERDMA" & WRIGHT Box 5418 Helena, MT 59604

Wilma Jensen County Superintendent of Schools Teton County Courthouse Choteau, MT 59422

Paralegal Assistant

Office of Public Instruction